

**§ 308.512 Parties to the hearing.**

(a) The parties to the hearing will be the defendant and the Corporation.

(b) Pursuant to the False Claims Act (31 U.S.C. 3730(c)(5)), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

**§ 308.513 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of the FDIC who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Board, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ will not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the FDIC will be an attorney employed in the FDIC's Legal Division; however, the representative of the FDIC may not participate or advise in the review of the initial decision by the Board.

**§ 308.514 Ex parte contacts.**

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 308.515 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. An affidavit al-

leging conflict of interest or other reason for disqualification must accompany the motion.

(c) Such motion and affidavit must be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections will be deemed waived.

(d) Such affidavit must state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. The representative of record must certify that the affidavit is made in good faith and this certification must accompany the affidavit.

(e) Upon the filing of such a motion and affidavit, the ALJ will proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case will be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Board may determine the matter only as part of the Board's review of the initial decision upon appeal, if any.

**§ 308.516 Rights of parties.**

Except as otherwise limited by this subpart, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law which will be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law.